

Remarks

The August 11, 2008 Office Action contains rejections of the pending claims on the basis of four references. The references are:

1) "How to sort out the premium drivers of post-deal value"; Mergers and Acquisitions; July/August 1993, Vol. 28, Iss.1; pg. 33, 5 pgs by Daniel W. Bielinski (hereinafter, Bielinski) that teaches the use of Value Based Management (hereinafter, VBM). Bielinski provides additional evidence of the novelty, non-obviousness and newness of the claimed invention in a number of ways including:

a) Bielinski teaches away from the cash flow analysis method of the claimed invention by teaching a strict reliance on analyzing historical cash flow. By way of contrast, the innovative system and method described in the above referenced application (and all Asset Trust applications) relies on the fact that expected future cash flows may contribute to business value.

b) As shown below, Bielinski teaches away from the data analysis method of the claimed invention by characterizing a business with summary level financial statement schedule data and data that can be derived from financial statement data (see Table 2 from Bielinski for

Table 1: Operating Cash Flow Sensitivity (from Bielinski)

	1987	1988	1989	1990	1991
Sales	\$7,300,000	\$7,000,000	\$7,900,000	\$8,200,000	\$9,000,000
Raw Material	<u>\$2,000,000</u>	<u>\$1,600,000</u>	<u>\$1,900,000</u>	<u>\$2,000,000</u>	<u>\$2,300,000</u>
Value Added	\$5,300,000	\$5,400,000	\$6,000,000	\$6,200,000	\$6,700,000
HR	\$2,500,000	\$2,600,000	\$2,700,000	\$2,700,000	\$3,000,000
Tech/Capital	\$400,000	\$600,000	\$650,000	\$780,000	\$800,000
Other	<u>\$250,000</u>	<u>\$225,000</u>	<u>\$240,000</u>	<u>\$210,000</u>	<u>\$260,000</u>
Gross Margin	\$2,150,000	\$1,975,000	\$2,410,000	\$2,510,000	\$2,640,000
SG&A	\$1,600,000	\$1,700,000	\$2,100,000	\$2,200,000	\$2,400,000
Other	<u>(\$14,000)</u>	<u>(\$6,000)</u>	<u>(\$25,000)</u>	<u>(\$10,000)</u>	<u>(\$40,000)</u>
Operating Income	\$536,000	\$269,000	\$285,000	\$300,000	\$200,000
Taxes	\$60,000	\$25,000	\$25,000	\$15,000	\$20,000
Depreciation	<u>\$250,000</u>	<u>\$300,000</u>	<u>\$375,000</u>	<u>\$350,000</u>	<u>\$400,000</u>
Cash Flow	\$726,000	\$544,000	\$635,000	\$635,000	\$580,000
Change in NWC	(\$56,000)	\$200,000	(\$467,000)	\$293,000	\$1,000
Capital Expenditures	\$400,000	\$200,000	\$550,000	\$450,000	\$375,000
Operating Cash Flow	\$382,000	\$144,000	\$552,000	(\$108,000)	\$204,000

additional examples). By way of contrast, the innovative system and method described in the above referenced application teaches and relies on transforming data representative of the

business organization including element of value data, transaction data and financial statement data into a model of the physical entity (the business) and uses that model for a variety of things including financial management and value optimization.

Table 2: Key Factor Cash Flow Sensitivity (from Bielinski)		
Cash Flow/Value Driver	Sensitivity Range	Cumulative Historical Cash Flow % Change
Sales Growth %	+5%	+ 84%
	-5%	- 76%
Raw Material Cost (% reduction in material cost)	-5%	+ 25%
	+5%	- 25%
Production HR (% reduction in HR cost)	- 1%	+ 7%
	+ 10%	- 70%
Inventory Turnover	+ 1 Turn	+1%
	- 1 Turn	-1%

c) Bielinski teaches away from the market efficiency assumptions implicit in the claimed invention by teaching the standard valuation model. By way of contrast, the innovative system and method described in the above referenced application (and all Asset Trust applications) teaches and relies on the fact that market sentiment may contribute to business value. Market sentiment is defined as the difference between the market value of the business enterprise and the value of the non-sentiment categories (or segments) of value within the enterprise.

d) Bielinski teaches away from value creation model incorporated within the claimed invention by teaching that there is one way to change business value: change the value of period cash flow.

Value change per 09/940,450	Value change per Bielinski
1. Change value of cash flow, 2. Change value of elements of value, 3. Change value of growth options & 4. Change value of market sentiment	1. Change value of period cash flow

By way of contrast, the innovative system and method described in the above referenced application (and all Asset Trust applications) teaches and relies on the fact that there are at least four ways to change value between one point in time and another point in time: change the value of cash flow, change the value of the elements of value, change the value of growth

options and change the value of market sentiment. A comparison of these teachings is summarized in the table above.

e) Bielinski teaches away from the claimed invention by teaching a meaning for the term “value driver” that is different from the definition used in the specification for the claimed invention. Bielinski teaches that value drivers are high level summaries of enterprise financial performance like operating profit margin and that operational value drivers are sub-components of value (raw material cost and/or production labor cost, see Table 2 copied from Bielinski above and the Table below), and/or summary financial statistics, (i.e. sales growth rate and inventory turnover, which are derived from financial statement schedule data).

Aspect of financial performance	Designation per 09/940,450	Designation per Bielinski
Raw material cost	Sub-component of expense value	Operational value driver
Production labor cost	Sub-component of expense value	Operational value driver

By way of contrast, value drivers are defined in the specification for the claimed invention as element of value performance indicators that are causal to changes in: components of value (revenue, expense and capital change) and/or market value.

f) Bielinski teaches away from the modeling method of the claimed invention by teaching VBM which relies on the tree based analysis of cash flow. By way of contrast, the innovative system and method described in the above referenced application teaches and relies on a predictive model based analysis of revenue, expense, capital change, market sentiment and cash flow. In addition to using different algorithms, there are other differences in the modeling methods used by Bielinski that provide additional evidence of novelty, non-obviousness and newness, including:

- 1) different assumptions – as is well known to those of average skill in the art, the tree based analysis method used by Bielinski combines the inputs to each node in a linear fashion and passes on the result of the linear combination to the next level in the tree (see Table 2 for confirmation). By way of contrast, the innovative system and method described in the above referenced application teaches and relies on linear and non-linear predictive models to analyze data inputs.
- 2) different levels – as discussed previously, Bielinski teaches a different definition for the term “value driver”. Consistent with this different definition, Bielinski teaches the use of

different levels of aggregation for modeling cash flow than those used in the above referenced application. The levels used by Bielinski are:

- a) First level – Sub-components of value & ratios
- b) Second level – Summary business financial measures
- c) Third level - Cash flow
- d) Fourth level – Value change

By way of contrast, the innovative system and method described in the above referenced application teaches the use of two different layers for cash flow modeling and places one of the layers used by Bielinski in a different position in the hierarchy.

- a) First level – Element of value performance indicators (value drivers)
- b) Second level – Elements of value (i.e. brands, customers, vendors, etc.)
- c) Third level - Components and sub-components of value (i.e. material cost)
- d) Fourth level - Cash flow
- e) Fifth level – Value Change

3) different data input identification method – as is well known to those of average skill in the art, the financial statement data input to each node of the tree based analysis are determined by the user. By way of contrast, the innovative system and method described in the above referenced application teaches and relies on an innovative and objective variable selection algorithm to identify the data used to complete the modeling.

Table 3: Break-Even Key Factor Tradeoffs (from Bielinski)		
Sales Growth %	Gross Profit	Historical Cash Flow Change
+ 1%	- 0.50%	~ 0%
+ 3%	- 1.50%	~ 0%
+ 5%	- 2.50%	~ 0%
- 5%	+ 3.00%	~ 0%
- 3%	+ 1.75%	~ 0%
- 1%	+ 0.50%	~ 0%

g) Bielinski teaches away from the method for identifying value improvements described in the above referenced application by teaching sensitivity analysis (see Bielinski Table 2) and break even analysis (see Bielinski Table 3) to identify improvements. By way of contrast, the innovative system and method described in the above referenced application (and all Asset Trust applications) rely on simulated changes and/or optimization analyses to determine which value improvements are the most valuable.

2) U.S. Patent 6,018,722 (hereinafter, Ray et al) which combines the previously disclosed and well known Capital Asset Pricing Model (CAPM), previously disclosed and well known technical

analysis and previously disclosed and well known neural network analysis with a subjectively determined asset allocation model in an invention that identifies a portfolio of securities for an individual that maximizes the expected portfolio value given the current results of technical and fundamental analyses and the asset allocation model. Ray provides additional evidence of the novelty, non-obviousness and newness of the claimed invention in a number of ways including:

1. Teaching away from the methods of the above referenced application by teaching the subjective analysis of technical market data by an individual as a basis for trading. By way of contrast, the innovative method and system described in the above referenced application teaches the development and use of an objectively determined market sentiment value as the basis for trading.
2. Teaching a reliance on the analysis and optimization methods of the Capital Asset Pricing Model which teach away from the analysis and optimization methods used in the claimed invention (and all Asset Trust applications).
3. Teaching away from the methods of the above referenced application by teaching the use of a two step process that involves analysis in accordance fundamentals as described under item 2 and technical analysis as described in item 1 with or without the help of a neural network as the basis for trading a security. By way of contrast, the innovative method and system described in the above referenced application teaches the development and use of an objectively determined market sentiment value as the sole basis for trading.
4. Teaching away from the methods of the above referenced application by teaching a reliance on a subjectively determined asset allocation model in a portfolio optimization analyses. By way of contrast, the innovative method and system described in the above referenced application (and all Asset Trust applications) relies on the development of an objective solution to financial optimization problems.

3) U.S. Patent 6,549,922 (hereinafter, Srivastava et al) which teaches an extensible framework for the automatic extraction and transformation of metadata into logical annotations. Srivastava has no known direct relevance to the instant application as it teaches a method for metadata extraction and transformation that is simply not used in the instant application. Srivastava does mention the term “metadata mapping” however the term is used in a way that teaches away from the claimed methods as it is used to describe the mapping of extracted and summarized metadata annotations to a schema. By way of contrast, the innovative system of the present invention uses the term “metadata mapping” to describe the mapping of database metadata from a plurality of sources to a central database metadata.

4) U.S. Patent 7,249,328 (hereinafter Davis) which teaches previously disclosed methods for

preparing and presenting data in tables and graphs using a combined browser spreadsheet application. Data is prepared by identifying the changes require to convert data to a common dtd and storing the set of identified changes in a separate database. When data are required for presentation and manipulation by the browser-spreadsheet application, the data are retrieved from their original locations, and combined with the stored set of changes. Similar methods for preparing and presenting data were already disclosed in the Bowman Amuah and Ranger patents. Bowman Amuah also disclosed the combined preparation and manipulation of data and that smil was going to replace xml. Davis provides additional evidence of the novelty, non-obviousness and newness of the claimed invention in a number of ways including:

- a) Davis reinforces the previously disclosed teachings of Bergstrom and Widom that the limitations of dtd's that make them generally unsuitable for use in enterprise processing. Davis does this by teaching the use of xml for formatting of data for graphs and tables. Davis also reinforces Ranger's teaching that xml is only suitable for presentations.
- b) Davis does not create an integrated database and is not capable of creating one. By way of contrast, the innovative system of the present invention transforms data into an integrated database in accordance with a xml and common schema where it can be retrieved and used by any application.

As the above discussion and the previously filed declaration make clear, Davis does not have any relevance to the claimed inventions. The Assignee notes that the Examiner has also failed to consider the other references identified by the previous Examiner that provide substantial additional evidence of the novelty, non-obviousness and newness of the claimed invention.

Taken as a whole, the two references provide substantial additional evidence of the novelty, non-obviousness and newness of the claimed invention. The above discussion also provides substantial evidence that the references were selected because they contained a few words that were the same as those in the claims and not because the provided evidence of obviousness. The latter statement is made because:

- 1) the Examiner who chose the references was apparently unaware of the fact that the relevant portions of the references had previously been disclosed, and
- 2) the cited references provide substantial evidence of the novelty, newness and non-obviousness of the claimed inventions by failing to teach and/or by teaching away from all the claimed methods.

35 U.S.C. §101 rejections

In the 11 August 2008 Office Action claims 44 – 51, 145 – 149 and 159 - 163 are rejected under 35 USC §101 for allegedly not producing useful outputs. The Assignee traverses the claim rejections by noting that the evidence required to support the prima facie case that would sustain the claim rejections has not been provided. The Assignee also notes that claim amendments have obviated these rejections by making the transformation of data representative of a physical object such as an enterprise into a different state or thing more apparent. Although not required, the Assignee has also amended the claim to make the innovative output of the claimed process more clear.

35 U.S.C. §102 rejections

In the 11 August 2008 Office Action claims 34 – 39, 42 – 47, 50 – 52, 135 – 138, 141 – 143, 145 and 149 were rejected under 35 USC §102 as being anticipated by U.S. Patent 7,249,328 (hereinafter Davis). The Examiner has cited the Davis document as a reference. The Assignee respectfully traverses the rejections for anticipation in two ways. First, by noting that the rejections fail under both standards of the APA. Second, by noting that the Office Action has failed to establish a prima facie case of anticipation for the rejected claims. More specifically, the Office Action fails to establish a prima facie case of anticipation in as many as four separate ways for every rejected claim.

The first way in which the 11 August 2008 Office Action fails to establish a prima facie case of anticipation for many if not all of the rejected claims is that the Davis document fails to describe every element of the rejected claims. MPEP 2131 notes that:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The second way in which the 11 August 2008 Office Action fails to establish a prima facie case of anticipation for many if not all of the rejected claims is that the Davis document fails to provide the same level of detail that is present in the claim. MPEP 2131 notes that anticipation requires that:

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The third way in which the 11 August 2008 Office Action fails to establish a prima facie

case of anticipation for many if not all of the claims is that the Office Action does not describe the basis in fact or technical reasoning that is required to support the allegations regarding allegedly inherent characteristics contained in the Davis document. MPEP 2112 notes that:

"In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)

The fourth way in which the 11 August 2008 Office Action fails to establish a *prima facie* case of anticipation for many if not all of the claims is that the cited prior art does not enable the completion of a single claim.

The Assignee respectfully submits that the rejection of independent claims 34, 44, 52, 135, 141, 145 and 149 can be traversed by noting that Davis: is missing elements contained in claim 34, 44, 52, 135, 141, 145 and 149 provides insufficient detail regarding elements of claim 34, 44, 52, 135, 141, 145 and 149 that any alleged inherency of elements of claim 34, 44, 52, 135, 141, 145 and 149 has not been explained and that Davis does not enable the completion of any aspect of claim 34, 44, 52, 135, 141, 145 and 149. Elements of claim 34, 44, 52, 135, 141, 145 and 149 not explicitly or inherently described or enabled in the Davis document include: data integration, metadata mapping (affects claims 141, 145 and 149) and outputting an integrated database. Davis also lacks detail regarding data integration, metadata mapping (affects claims 141, 145 and 149) and outputting an integrated database and any alleged inherency of data integration, metadata mapping (affects claims 141, 145 and 149) and outputting an integrated database has not been explained. As a result of these deficiencies, a *prima facie* case that would support the anticipation rejection of claims 34, 44, 52, 135 and 141 has not been established. Claims 35 – 39, 42, 43, 45 – 47, 50, 51, 136, 137, 142 and 143 are directly or indirectly dependent on claims 34, 44, 52, 135 and/or 141 so the traversal of the claim 34, 44, 52, 135 and 141 anticipation rejections also serves to traverse the rejection of these claims by making it clear that the Examiner has failed to establish a *prima facie* case of anticipation for the parent claim. The Assignee notes that there are still other ways to traverse these claim rejections. As is well known, in order to anticipate under 35 U.S.C. § 102 – the reference must not only disclose all elements of the claim within the four corners of the document, but it must also disclose those elements "arranged as in the claim" (*Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)). Davis does not have all the elements and it does not arrange them in the same manner disclosed in any of the claims.

35 U.S.C. § 103 Rejection of Claims

In the 11 August 2008 Office Action, claims 62, 63, 68, 70, 90 and 134 are rejected as being unpatentable over Davis in view of Bielinski and Ray. The Examiner has cited these three documents as references. The Assignee respectfully traverses the §103 rejections of claims 62, 63, 68, 70, 90 and 134 in two ways. First, by noting that the cited combination of documents fails to establish a prima facie case of obviousness. Second, by noting that the assertions regarding the alleged obviousness of the claims are not in compliance with the requirements of the Administrative Procedures Act and are therefore moot.

As discussed previously, the 11 August 2008 Office Action fails to establish the prima facie case of obviousness required to sustain the rejections of claims 62, 63, 68, 70, 90 and 134. The 11 August 2008 Office Action fails to establish the required prima facie case of obviousness in a number of ways, including: citing a combination of documents that fails to teach or suggest one or more limitation for every claim (see *In re Royka*, 490 F.2d 981, 180 USPQ 580) and citing a combination of documents that teach away from the claimed invention as described previously on pages 14 through 19 of this document.

In the 11 August 2008 Office Action, claims 144, 147, 155 - 157, 161 and 163 are rejected as being unpatentable over Davis in view of Srivastava. The Examiner has cited these two documents as references. The Assignee respectfully traverses the §103 rejections of claims 144, 147, 155 - 157, 161 and 163 in two ways. First, by noting that the cited combination of documents fails to establish a prima facie case of obviousness. Second, by noting that the assertions regarding the alleged obviousness of the claims are not in compliance with the requirements of the Administrative Procedures Act and are therefore moot.

As discussed previously, the 11 August 2008 Office Action fails to establish the prima facie case of obviousness required to sustain the rejections of claims 144, 147, 155 - 157, 161 and 163. The 11 August 2008 Office Action fails to establish the required prima facie case of obviousness in a number of ways, including: citing a combination of documents that fails to teach or suggest one or more limitation for every claim (see *In re Royka*, 490 F.2d 981, 180 USPQ 580) and citing a combination of documents that teach away from the claimed invention as described previously on pages 14 through 19 of this document.

Statement Under 37 CFR 1.111

Amendments to a number of claims are included in the response to the 11 August 2008 Office Action. 37 CFR 1.111 states in part that: *In amending in response to a rejection of claims in an application or patent undergoing reexamination, the Assignee or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. He or she must also show how the amendments avoid such references or objections.* The Assignee notes that this requirement is not relevant to the instant application because no documents or references that need to be avoided have been identified during the prosecution of this application or any applications in the CIP chain.

Request for correction

In accordance with the relevant statutes and precedents the Assignee is entitled to expect and receive: an unbiased patent application examination conducted by an Examiner with knowledge of the relevant arts who follows the law. To date, the activity associated with the instant patent application bears no resemblance to the patent application examination standards dictated by statute and precedent. Prompt correction is requested.

Reservation of rights

The Assignee hereby explicitly reserves the right to present the previously modified and/or canceled claims for re-examination in their original format. The cancellation or modification of pending claims to put the instant application in a final form for allowance and issue should not to be construed as a surrender of subject matters covered by the original claims before their cancellation or modification.

Conclusion

The pending claims are of a form and scope for allowance. Prompt notification thereof is respectfully requested.

Respectfully submitted,

Asset Trust, Inc.

/B.J. Bennett/

B.J. Bennett, President

Date: December 11, 2008